

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

1/10/84
P.L.I
29391

FILE: B-215328

DATE: September 24, 1984

MATTER OF: Hallcrest Systems, Inc.

DIGEST:

1. Where the protester has only offered evidence that conflicts with the agency's evidence as to the time that its proposal was submitted, the protester has failed to carry the burden of affirmatively proving its case that the proposal was timely submitted.
2. A late hand-carried proposal may not be considered unless there is a showing that wrongful government action was the paramount cause of the late delivery.

Hallcrest Systems, Inc. (Hallcrest), protests the rejection of its proposal as late under request for proposals No. EMW-84-R-1558 issued by the Federal Emergency Management Agency (FEMA), Washington, D.C. We deny the protest.

The time set for the receipt of proposals was 2 p.m., May 15, 1984. Room 730 at FEMA headquarters was designated as the place for the submission of hand-carried proposals.

According to the protester, on May 15, 1984, its representative, Mr. Mengel, left the corporate office located in Frederick, Maryland, by automobile at approximately 12:30 p.m., to personally deliver the proposal. En route, Mr. Mengel had a flat tire, but arrived in the driveway in front of the FEMA office building at 1:56 p.m. He immediately ran to the sign-in desk, arriving at 1:57 p.m., signed in (without indicating a time) and took the elevator to the seventh floor. Mr. Mengel states he entered room 730 just prior to 2 p.m., as indicated by the wall clock. He waited for the receptionist to look up from her desk and, when she did, she said "it looks like its after 2 p.m." Mr. Mengel stated that he had entered the room prior to 2 p.m. When asked by the clerk, two other workers in room 730, one of whose back was to the wall clock, stated it was 2:01 p.m. A contract specialist

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marked the proposal as received at 2:01 p.m. After some discussion, the second worker notified the contracting officer of the situation. The contracting officer, taking the word of the government personnel, although Mr. Mengel disagreed, declared the proposal late. Mr. Mengel was provided a receipt by the contracting officer. On May 23, 1984, FEMA notified Hallcrest that its proposal was rejected.

Hallcrest contends that the contracting officer's determination that its proposal was late was erroneous for two reasons: (1) the proposal was constructively delivered to room 730 before 2 p.m. because Mr. Mengel entered the FEMA building lobby at 1:57 p.m., and (2) FEMA failed to implement procedures that would have permitted the application of the late proposal regulations in an unambiguous manner. Hallcrest argues that FEMA's accepting the word of its employees as evidence of the time of receipt did not conform to the RFP, which requires that a time/date stamp be used. Hallcrest advises that room 730 has a time/date stamp but that FEMA did not use it. Also, Hallcrest states that only the time was marked on its bid wrapper and not the date. Therefore, the failure to implement the correct procedure of time/date stamping resulted in the proposal being marked late.

It is the responsibility of the offeror to deliver its proposal to the proper place at the proper time. Neither the solicitation late proposal clause, the Federal Procurement Regulations, nor decisions of our Office require that timely receipt of hand-carried proposals be proved by a time/date stamp or other documentary evidence maintained by the government installation but, instead, all relevant evidence is for consideration in determining whether a hand-carried proposal was timely received. We have held that statements by government personnel as to time of receipt of low proposal are competent evidence of that fact. See Visions, Ltd., d/b/a Visions Paratechnical, B-210104, May 17, 1983, 83-1 C.P.D. ¶ 525.

The RFP advised offerors that all hand deliveries must be made to room 730 in the FEMA building. Also, the RFP contained special instructions, as follows:

"The stipulations set forth in [the late proposal clause] shall be strictly enforced; therefore, if proposals are hand delivered, adequate time should be allowed to provide identification to the FEMA guard service,

obtain clearance to enter the building, sign in, obtain a visitor pass from the guard, take an elevator to the seventh floor, locate the room number and Contracting Officer, and submit the proposal by the time specified in the solicitation."

Furthermore, the contracting officer, in a memorandum to lobby guards, advised that proposals were due in room 730 no later than 2 p.m., that any messengers bearing proposals could be admitted to the building without obtaining the normal telephone clearance and that admission of such messengers should be expedited, especially when arriving close to the closing time.

Mr. Mengel states he entered the FEMA lobby at 1:57 p.m. and signed into the building. The record reflects that the guard on duty signed Mr. Mengel into the building at 1:59 p.m., because, as mentioned above, Mr. Mengel neglected to do so. Although Hallcrest questions whether the guard noted the correct time, the preceding person recorded on the sign-in sheet signed into the building at 1:59 p.m. This supports the conclusion that Mr. Mengel probably signed into the building at 1:59 p.m. Moreover, FEMA reports that as further verification of the exact time Mr. Mengel entered into room 730, the contracting officer checked the wall clock against telephone company official time and it was found to be accurate within seconds.

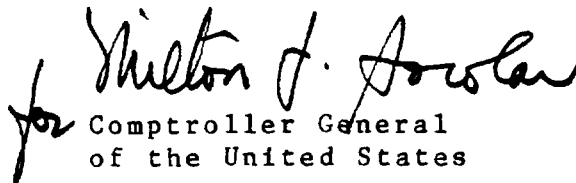
Here, we must weigh Hallcrest's self-serving statement by Mr. Mengel that he submitted the proposal prior to 2 p.m. against the fact that the three employees observed Mr. Mengel enter room 730 at 2:01 and that the sign-in sheet establishes that Mr. Mengel signed into the building at 1:59 p.m. Since Hallcrest has only offered evidence that conflicts with FEMA as to the time the proposal was delivered to room 730, we find that Hallcrest has not met the burden of affirmatively proving its case. See DATA CONTROLS/North, Inc., B-204812.3, Feb. 17, 1982, 82-1 C.P.D. ¶ 139. Therefore, we find that the proposal was late.

A late hand-carried proposal may be considered where it can be shown that wrongful government action (such as improper or conflicting delivery instructions) was the sole

or paramount cause of the late receipt. See Key Airlines, B-214122, Feb. 27, 1984, 84-1 C.P.D. ¶ 242. Even if we assume some government fault in receiving the proposal, it is apparent from the record above that Hallcrest's decision to wait until 2 hours before closing to begin delivering its proposal was a principal cause of its late arrival. This is particularly so because the RFP cautioned offerors concerning hand deliveries, and the contracting officer provided the guards with instructions for handling proposal deliveries expeditiously, which was done here. Priest & Fine Inc., B-213603, Mar. 27, 1984, 84-1 C.P.D. ¶ 358.

Although Hallcrest argues that the proposal was constructively in room 730 when Mr. Mengel entered the FEMA building, we have held that the proposal must be delivered to the office designated in the solicitation. Office refers to the ultimate destination of the bid, not to any intermediate stop in transit. In this case, the RFP designated room 730. See Retsina Company, B-212471, Aug. 3, 1984, 84-2 C.P.D. ¶ ____.

The protest is denied.

for 
Comptroller General
of the United States